

Background

In judgment entered in January 2001, the family court granted dissolution of the parties' marriage and divided their assets, including stock and other securities. The court awarded the parties' house in San Jose to Herman, but Herman was required to pay Zdenka \$467,000, of which the parties agreed was one-half the value of the property.

In March 2004 Zdenka moved for the sale of the family residence. In her accompanying declaration she stated that Herman had "failed to cooperate in the division of any property pursuant to the Judgment." Herman had, for example, refused to turn over original stock certificates that were necessary to divide the securities accounts. Zdenka asked the court for an order that the division take place without the stock certificates and that the house be sold so that she could collect the money Herman owed her. Herman opposed the motion and proposed instead that a lien on the house be released and that he take out a \$233,500 loan on the property, to be paid to Zdenka upon transfer of title. On April 20, 2004, the court filed an order in which it found that Herman owed Zdenka \$576,752.79, including interest through April 30, 2004. Herman was allowed 30 days to pay Zdenka; if he failed to do so, the house would be sold in order to satisfy the judgment. Herman unsuccessfully appealed from that order. (*In re Marriage of Astar*, H027461, unpub.)

On August 10, 2004 the court filed a new order, from which Herman now appeals. In that order the court directed him to relinquish specified stock certificates, to disclose to Zdenka where he had transferred certain funds in two IRA or 401(K) accounts, and to instruct the custodian of those funds to divide the accounts equally and give Zdenka half of the proceeds.

Discussion

Herman offers no legally or factually supported ground for concluding that the August 10, 2004 order was erroneous. He asserts facts that are not in record, (Herman alleges, for example,

that Zdenka "raided liquid family assets" before they separated.) a "conspiracy of attorneys on the case" and the "persecution" of him through the order, and an attempt by Zdenka to extort assets from him. He does not provide a copy of the pleadings leading to challenged order, (The order indicates that a motion or order to show cause was filed on June 24, 2004. The only motion in the record before us, however, is one that was filed March 2.) nor we have a reporter's transcript, so we are unable to understand the problem the superior court was attempting to resolve. We glean from Herman's appellate brief that he seeks recognition of his "right to survivorship benefit to community property," but he does not explain how this "right" was compromised in present order. He also ask this court to instruct family court judge to "deduct half value of assets already divided from compensatory payment of \$233,500 for house as per Article 7 of the Judgment [of Dissolution]," but this appears to be request directed at previous order, which is not now before us. He also challenges a provision in the present order that he not "communicate with Bank of New York and Equiserve regarding the stock ... to be transferred, other than to deliver to Bank of New York and Equiserve the stock certificates," but he does not provide argument for the bare assertion that this directive violated his "constitutional right."

Herman offers no other argument, facts, or authority on which this court could find error in family court's order.

Disposition

The order is affirmed.

ELIA, J. WE CONCUR: RUSHING, P.J. PREMO, J.

In re Marriage of Aster H027461

PETITION FOR REHEARING

Court of Appeals CA Sixth Appellate District
H027866 (SCC Superior Court FL 086124)

The Appellant petitions for rehearing on the grounds of Omission or Misstatement of Issue or Fact.

The Court of Appeals is affirming the order on the ground of petitioner's failure of "relinquishing control of stocks and funds". Detailed arguments raised in Opening Brief are ignored.

Misstatements and omissions:

- [Herman] required to pay Zdenka \$467,000 for house
- had failed to cooperate in division of **any** property
- refuses to turn over original stock certificates
- unsuccessfully appealed H027461
- in matter of extortion of 401K accounts
- asserting conspiracy in [Zdenka's] raid on family assets
- nature of claim to survivorship benefit
- objections to violation of constitutional rights

There is potential for more to appear in properly conducted briefing and oral arguments.

It is respondent's burden to augment appellate record if deemed to be inadequate, participate in briefing and argue to resolution. None satisfied, the Court sided with absent respondent and turned blind eye even to principal issue of appellant's right to survivorship benefit in community property while denying him opportunity to argue for himself.

The Appellant begs the Court to reconsider its opinion, compel the Respondent to, at least, appear on oral arguments and grant rehearing or set aside the appealed from Superior Court Order.

San Jose June 20, 2005.

"s/ Herman Aster"

Court of Appeal, Sixth Appellate District No. H027866
S135545

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re Marriage of ZDENKA AND HERMAN ASTER

ZDENKA ASTER, Respondent,

v.

HERMAN ASTER, Appellant

Petition for review DENIED.

Supreme Court
FILED
AUG 31 2005
Frederick K. Ohlrick
Clerk - Deputy

“s/ George”

Chief Justice

**UNITED NATIONS
UNIVERSAL DECLARATION OF HUMAN RIGHTS**

Article 17-1

Everyone has the right to own property **alone** as well as in association with others.

Article 25-1

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in event of unemployment, sickness, disability, widowhood, **old age** or lack of livelihood in circumstances beyond his control.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at destruction of any of the rights and freedoms set forth herein.